

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALEX P. SORIA,

Defendant.

Case No. 2:11-cr-00156-LDG (NJK)
Case No. 2:13-cv-00257-LDG

ORDER

The defendant, Alex P. Soria, has filed a motion pursuant to 28 U.S.C. §2255 to vacate, set aside, or correct sentence by a person in federal custody (#141). The motion asserts eight grounds for relief. Having reviewed each of the grounds, it plainly appears from the motion and the record of prior proceedings that the defendant is not entitled to any relief. Accordingly, the Court will dismiss the motion.

In his first and fourth grounds for relief, the defendant asserts his first counsel's conflict of interest denied him due process and a fair hearing, and rendered the assistance of counsel ineffective. He further asserts his second counsel, appointed to replace the first, was not supportive or encouraging to proceed with trial. The defendant's asserted facts reference a motion brought by the defendant on the eve of the scheduled start of trial, seeking to dismiss his first counsel. The defendant asserted, in his motion and in a hearing

1 held on the motion, that his first counsel had a conflict of interest arising from his
2 membership in an organization to which four of the prosecution's witnesses belonged. At
3 the hearing, the defendant acknowledged that he had been aware of this asserted conflict
4 of interest for nearly a year. The Court granted the defendant's motion, appointed new
5 counsel, and continued the trial to allow new counsel adequate time to prepare for trial.

6 In his present motion, the defendant now argues that, as a result of the mental
7 anguish and torment caused by this event, he opted to not proceed with a full-blown trial.

8 The defendant, despite having delayed and waited until the eve of trial, obtained the
9 relief he sought: the appointment of new counsel. The necessary outcome of waiting to
10 bring such a motion until the eve of trial is a delay in the trial. The record of prior
11 proceedings plainly establishes he is not entitled to relief on these grounds for relief.

12 In his second ground for relief, the defendant asserts his conviction was obtained in
13 violation of the privilege against self-incrimination. He concedes he voluntarily participated
14 in interviews with officials of the Social Security Administration. That he was not advised
15 that the information he voluntarily provided might be used to secure a conviction against
16 him is of no moment, as the defendant's motion reveals he was not in custody when he
17 provided the information. He is not entitled to relief on this ground.

18 Construed liberally, the defendant's third ground for relief appears to assert that, for
19 a variety of reasons, he should not have been criminally prosecuted. None of the
20 assertions warrant relief pursuant to §2255.

21 In his fifth ground for relief, the defendant asserts he was prosecuted because the
22 FBI was investigating the Office of the U.S. Attorney for Nevada concerning an unrelated
23 matter. The motion plainly establishes the defendant is not entitled to relief on this ground.

24 In his sixth ground for relief, the defendant asserts he was prosecuted because of
25 his race and disability. The record of proceedings (including the defendant's plea of guilty,
26 and the facts he admitted in connection with his plea) establishes that the defendant was

1 prosecuted because he engaged in substantial gainful employment, some of which was
2 unlawful, while receiving Social Security Disability benefits.

3 In his seventh claim for relief, the defendant argues he has been subjected to
4 double jeopardy because Nevada brought a criminal action against him involving some of
5 the victims whose losses were counted in this Court's determination of the restitution owed
6 by the defendant. That Nevada is prosecuting the defendant for state offenses related to
7 some of his federal offenses does not entitle the defendant to relief from his federal
8 conviction and sentence.

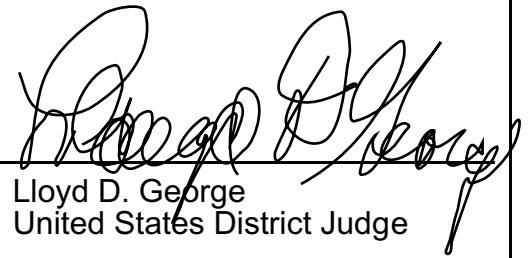
9 Finally, the defendant argues that, due to his physical condition, the sentence
10 imposed upon him constitutes cruel and unusual punishment. He further complains that
11 other people have committed more serious offenses and have received lighter sentences.
12 The record of prior proceedings establishes that the Court was well-aware of the
13 defendant's condition at the time of sentencing. The defendant's sentence does not
14 constitute cruel and unusual punishment. Therefore, for good cause shown,

15 THE COURT **ORDERS** that Defendant's Motion to Vacate, Set Aside, or Correct
16 Sentence by a Person in Federal Custody (#141) is DISMISSED;

17 THE COURT FURTHER **ORDERS** that Defendant's Motion for Status (#146) is
18 DENIED as moot.

19 THE COURT FURTHER **ORDERS** that the Clerk of the Court shall serve a copy of
20 this Order on the Defendant.

21
22 DATED this 15 day of April, 2014.

23
24 
25 Lloyd D. George
26 United States District Judge